"WHAT THIS COUNTRY DID TO US, IT DID TO ITSELF"

A Report of the B.C. Human Rights Commission on the Farmworkers & Domestic Workers

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Prepared by Eleanor Wachtel

PREFACE

When we were appointed Human Rights Commissioners in November 1981, we inherited from the outgoing Commission 31 Recommendations for Changes to the Human Rights Code. This was the culmination of the previous Commission's work during its term of office. The B.C. Code is almost a decade old. Innovative legislation of this kind inevitably requires updating and fine-tuning. Thus, for example, the Ontario, Québec, and federal Human Rights Acts have all been rather extensively amended recently—to include new areas of protection and refine the administration and workings of the codes. Manitoba too has just initiated plans to modify its code.

With little hesitation and indeed with considerable commitment, we endorsed the principles of the Recommendations for Changes to the Human Rights Code of B.C. To underline that commitment, and further measure the climate of concern among the province's citizenry, we also undertook a series of local, open hearings in 1982. (There were 8 hearings in all: Victoria—March 29; Port Alberni—March 30; Nelson—May 17; Kelowna—May 18; Farmworkers in Vancouver—May 21; Prince George—May 25; Williams Lake—May 26; Vancouver—June 17 & 18.)

It would hardly be an exaggeration to say that we were shaken and surprised by the degree of frustration and anger we encountered. In failing to act on the previous Commission's recommendations, and allowing more than three months to elapse before naming new Commissioners, the government seemed to many to be signalling their indifference. Some people were openly suspicious that the Commission hearings were simply a means of diffusing concern or merely a sop to reformist groups.

It will soon be two years since those original recommendations—themselves based on hearings and lengthy deliberations—were put forward. To date, there has been no official positive reaction from government to indicate a move towards implementation. Groups pressed us for action; to heed the recommendations of the government-appointed committee for the International Year of the Disabled, for example, and to amend the Code in response to the recommendations of the previous Commission.

Another source of concern we felt in the hearings was the extent to which they called forth heartfelt articulation of suffering in areas that neither the Recommendations nor the Human Rights Code currently address. Clearly, there are all too few forums where people from the various regions of the province can get a hearing and which welcome the airing of problems. No one interested in human rights, in the rights of people to live in dignity and with equal opportunity in Canadian society, can afford not to hear.

Thus, the plight of farmworkers compelled our attention from the very first month of our appointment. We were aware that existing provisions didn't enable the Human Rights Branch to respond to complaints from the farmworkers with respect to perceived discrimination created by other legislation, but we were firmly convinced that there was a connection. It is arguably no coincidence that farmwork is an occupation practised almost exclusively by ethnic minorities. So that they could present their case, we decided to conduct a special day-long hearing devoted

exclusively to their predicament. More than 30 briefs were presented. Similarly, we recognized the structurally disadvantaged situation of domestic workers, which is a long-standing, neglected area of concern. In addition, we sought to give priority to Native Indian rights by establishing a permanent Native Indian Advisory Committee.

The Commission also anticipates a whole set of new wrinkles introduced in anticipation of the as yet infant document, the federal Charter of Rights and Freedoms—in particular, the equality provisions found in Section 15 which will take effect in April 1985. Its role and implications for human rights codes had also to be addressed.

This three-part report is both a record of findings from hearing testimony and briefs, and a measure of our commitment to change. We have drawn on our own experience and expertise in the field of human rights, as well as on the documentation put before us. The first report recounts the situation of farmworkers and domestic workers; the second delineates new areas for expanding human rights protection; and the third takes up administrative aspects and the strengthening of existing coverage. Our purpose is to be a catalyst for action. The Human Rights Commission endorses quick implementation of the Recommendations for Changes to the Code. The credibility of the Commission, of this province's dedication to human rights, and most important, the very quality of life in British Columbia are at stake.

Charles Paris (Chairperson)

Gloria George

Bijou Kartha

Renate Shearer

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"NO-NAME" RACISM

"What a conference! You should have been with me, Nomi," she said. "There was so much to learn. I had no idea how much I still hurt. Just read some of these papers." She flung open her briefcase and took out a bundle of conference papers as I searched for the car keys.

"Ever read this?" she asked, punctuating the air with a pamphlet entitled "Racial Discrimination by Orders-in-Council".

I held the pages down on the steering wheel and scanned the sheets as the edges flittered in the gusts. There it was in black and white—our short harsh history. Beside each date were the ugly facts of the treatment given to Japanese-Canadians. "Seizure and government sale of fishing boats. Suspension of fishing licenses. Relocation camps. Liquidation of property. Letter to General MacArthur. Bill 15. Deportation. Revocation of nationality."

Wherever the words "Japanese race" appeared, Aunt Emily had crossed them out and written "Canadian citizen".

"What this country did to us, it did to itself," she said.

Obasan, Joy Kogawa*

No one likes to be reminded of past wrongs, especially those committed by relatively unknown or unrelated forebears. Yes, yes, we must not forget our history, but really, we protest, those B.C. legislators and the racist citizenry of bygone years were not quite as civilized as we are today. Those were different times, B.C. was a young, rough country.

Perhaps future historians will not be as generous in their appraisal. Racism has not been wrestled to the ground.

* Quotations in this report from *Obasan* by Joy Kogawa are used with permission of her publishers, Lester & Orpen Dennys, Ltd., 1981.

The commission received a series of briefs that argue that we are, at best, unwilling perpetrators of a 'modern', sanitized, 'no-name' brand of discrimination. Where once laws were punctuated by explicit prohibitions aimed at the "Chinaman, Japanese, or Hindu", now people point to more subtle effects stemming from exceptions in the Employment Standards Act, lack of protection of the Minimum Wage or Hours of Work Acts, or non-enforcement of Health Act regulations. Various presenters make the case that it is no accident that this failure of legal protection very largely affects persons of colour. When an argument ties clear and pressing problems of safety and unequal treatment before the law to a Canadian 'tradition of quiet racism', the Human Rights Commission must naturally take notice and respond. Such a linkage was made by groups representing B.C. farmworkers and also by spokespersons for domestic workers.

FARMWORKERS

In recent years, the problems farmworkers have been combatting have been written in screaming headlines. Exceptions to the Employment Standards Act exclude farmworkers from regulations regarding Minimum Wage, hours of work, and overtime. We have "Industrial Camp Regulations" passed in 1946 as part of the provincial Health Act that are effectively *never enforced*. The result is housing conditions for farm labourers that were likened to "Nazi concentration camps" by the coroner investigating the drowning death of a seven-month-old baby. And we have workers in the third most dangerous occupation in North America, with the highest rate of occupational disease of any industry, and a risk of injury six times greater than any city dweller's, still largely unprotected by the Workers' Compensation Board. This is particularly striking with regard to the hazards of pesticides. In fact, under the provisions of the federal Pesticide Residue Compensation Act, farmers whose crops are contaminated by pesticide residue are eligible for compensation, while the workers who actually apply the pesticides or are exposed to them in working the crops are not entitled to government compensation, protection, or safety standards.

The Historical Connection

Farmworker spokespersons regard these problems as stemming from racism. The historical connection they make between farmwork (and domestic labour as well) and racism is a long one. However, briefs presented by Calvin Sandborn, staff counsel for the Farmworkers Legal Services Project, set out the linkage quite simply.

In the early years of this century, East Indians, Chinese and Japanese were being brought to this province to serve as cheap labour. This practice threatened other workers, who agitated for restrictions. When the supply of Chinese was choked off by the punitive 1904 'head tax', cannery

owners, farmers, and employers of domestic servants faced a labour crisis. In 1906, the Fraser River Canners' Association and the Kootenay Fruit Growers' Association complained that labour costs had tripled and petitioned the government, demanding free entry for all immigrants who wished to work as servants or agricultural workers. The government responded and 15,000 new 'Asian' immigrants (5,000 East Indians and 10,000 Japanese) came to B.C. This rush created a labour glut and the government once more stemmed the flow, imposing new immigration quotas. As well, whole areas of employment were circumscribed by restrictive legislation.

This legislation was passed without any possibility of input from the groups affected. For a start, as early as 1907, all 'Hindus' (although British subjects) were excluded from the provincial voters' list (Chinese and Japanese had already been disenfranchised); and in 1908, from the municipal voters' lists. Since the federal government required that voters be eligible provincially, this ensured that these groups were excluded from national elections as well. The implications were that non-voters were also non-participants in all aspects of public life. They couldn't be elected to the provincial legislature, or be nominated for municipal office, as school trustees, or do jury service. They could not even vote in school board or water improvement district elections.

Excluded in this manner, these groups faced a number of specific restrictions to their employment:

1.) the Coal Mines Regulation Act Amendment of 1911 denied the Chinese the right to work in coal mines; and
2.) the Metalliferous Mines Regulation Act barred Chinese and Japanese workers from all mines, quarries and metallurgical work other than coal mines;
3.) laws excluded Chinese and Japanese from any employment on Crown granted land;

4.) laws prevented Asians from obtaining hand loggers licenses;
5.) laws banned Asians from becoming lawyers;
6.) laws barred Asians from becoming pharmacists;
7.) the standard contract of the Department of Public Works required private contractors to *not* hire Asians;
8.) municipal and provincial government policy effectively barred Asians from public service jobs;
9.) the Liquor Control Act of 1936 prevented Asians from obtaining beer licenses;
10.) amendments to the Fisheries Act in 1929 reduced the number of Japanese holding fishing licenses;
11.) the Trade Licenses Board Act of 1928 was designed to limit the number of business licenses granted to Asians; and
12.) the 1907 "Lemieux-Hayashi Agreement" and the 1924 "Gentleman's Agreement" between Canada and Japan designated that Japanese could enter Canada only to become *farm labourers*, *domestic servants*, and *contract labourers*.

When the Minimum Wage Act was passed in B.C. in 1925, it was publicly understood that one of its purposes was to reduce the number of Asians employed in the province. By guaranteeing a decent minimum wage, employers could attract whites, and would "naturally" choose whites over "less desirable" types. This would effectively push out Asian workers, ensuring their entrapment in the only areas of work NOT COVERED by the Minimum Wage Act—namely, *canners*, *farm labourers* and *domestics*.

"Life is so short," I said sighing, "the past so long.
Shouldn't we turn the page and move on?"
"The past is the future," Aunt Emily shot back.
Obasan, Joy Kogawa

More than half a century later, those same workers—farm labourers and domestics—remain unprotected by minimum wage laws.

> In 1981 the Provincial Cabinet passed the *Employment Standards Act Regulations 3 (4)* which excludes from the hourly minimum wage "farmworkers historically employed on a piece-work basis to hand harvest fruit, vegetables or berry crops". Thus, the present Cabinet codified the "historical" position of farmworkers—the position of being discriminated against. One must remember that the "historical" position was established at a time when Asian farmworkers did not even have the simple right to vote (a right not granted until legislation was passed in 1947 and 1949).
>
> —Brief submitted by the Farmworkers Legal Services Project

Racism—An Obstacle to Change

In the Fraser Valley, 80% of the farmworkers are East Indians, most of the remainder are Chinese or Native Indian. A recent study presented by Colin Ridgewell, chair of the Fraser Valley Task Force on Racism, points to an uneasy climate of racism. The Task Force concludes that "prejudice is a widespread phenomenon in the Valley, giving rise to a constant low level of racial tension."

The Report includes a series of "Anecdotes".

#30 At 3:20 a.m. an East Indian couple awoke

to the sound of breaking glass. They found that their basement windows had been broken by rocks. The police were informed.

#31 On a Sunday, the windows were broken in four cars parked outside the Sikh temple in Abbotsford. The vandalism was reported to the police, but several weeks after the incident it was discovered that no official record of these reports existed.

#34 An East Indian man who had been in Canada only six months found that somebody had set fire to his car. He could not understand why this would happen since he had hardly made any friends let alone enemies. It had to be explained to him that he lives in a community where it was possible that his "race" was sufficient motivation for some to prompt such vandalism.

"As the economy worsens," the Task Force Report concludes, "racial tensions can be predicted to increase."

It is this kind of troubled climate that feeds indifference to the continuance of inequitable laws. Arguments of farm economics ring false when the workers who consistently bear the brunt are ethnic minorities.

A Bitter Harvest

> We immigrants who till the soil and harvest the crop of Canada came to this country because we believed it would be a land of opportunity, justice and equality. We came here with great dreams. We have seen the seeds of those dreams grow into a bitter, bitter harvest. A harvest of discrimination, a harvest of poverty, a harvest of sickness, a harvest of death.
>
> —Raj Chouhan, President of the Canadian Farmworkers' Union

Approximately 13,000 farmworkers in B.C. are affected by these discriminatory laws, and the ramifications are extensive. It's a vicious circle. Each aspect of the farmworker's plight is compounded by each additional disadvantage. No minimum wage (or written contracts or statutory hours of work or overtime) spells poverty. No enforced housing standards means wretched living conditions. Together, the results are children in the fields and no protection—for adult or child—from the hazards of pesticides.

Poverty

Farmwork is relatively poorly-paying labour. The Matsqui, Abbotsford Community Services Survey showed that the majority of workers earn less than $3,000 per year from farmwork. In the shoulder season, earnings can be as low as $1.28 per hour (Sandborn, Farmworkers Legal Services Project submission). Until January 1983, this situation was exacerbated by section 16 of the Unemployment Insurance Act Regulations which strengthened the hold of contractors over farm labourers (and the former's ability to skim off a portion of the workers' already meagre earnings). The egregious regulation (repealed by the federal government in January 1983) excluded farm labourers from U.I.C. coverage if they worked for a single employer for less than 25 days or received from him less than $250 in earnings. Only farmworkers were subject to this additional hurdle, and the only way to bridge its inequities was to submit to the stranglehold of a contractor.

An Unhappy Choice

Farmwork implies a certain level of privation. At present, most people either have to travel long distances to the fields or move their families into temporary housing on the farm. Both options have clear drawbacks.

Briefs alluded to the trip to the fields, perhaps two hours

in the morning and another two at night in the back of the contractor's van or truck. The Canadian Farmworkers' Union noted that 29 farmworkers were recently injured when such a van skidded off the road and flipped over. There followed a classic closing of the barn gate situation when the RCMP subsequently set up roadblocks to stop and examine contractors' vans and Workers Compensation Board inspectors checked for safety features. Scores of highway violation tickets were issued by the police and comparable numbers of safety regulation compliance orders by WCB inspectors in this blitz.

To avoid this daily risk or simply because the farm is too far from home, the farmworker may live onsite. In practice, the entire family will work as well as live in the fields.

> I come to you as a representative of the farmworkers of British Columbia. We farmworkers have much more in common than our occupation as farmworkers. The vast majority of us are people from ethnic minorities. In the Lower Mainland and the Fraser Valley, we are people of colour, East Indians and Chinese. In the Okanagan, we are mostly Québécois and Native Indians.
>
> We work in the fields, reaping the two harvests, the sweet harvest that is found on your tables, and the bitter harvest that is our daily life . . . .
>
> Our children work with us because they have to, because our families cannot survive on the wages that are being paid to us. On June 23, 1981 a survey was done of strawberry pickers in the Fraser Valley—those pickers were averaging $1.28 an hour. On $1.28 per hour a parent cannot feed a child, let alone pay a babysitter to take care of that child. So the children come into the fields with us to pick what they can, if they are old enough. If they are not old enough to

pick, then the infants must be laid down in the recently poisoned fields (sprayed with pesticides). The toddlers must spend longs days seeking shade from the hot sun and shelter from the cold rain.

In 1980, four of our children died in the Fraser Valley. Summandeep Pejatta was 9 years old. Gurjit Pejatta was 8 years old. Boota Bassi was 10. . . . Their parents worked on a farm near Aldergrove. There was no government daycare provided at that farm as there is on many farms in California. Their poorly paid parents had no money for a babysitter. . . . When the boys weren't picking berries, they were supposed to stay near a certain tree, where the other children played. But, as children will do, the three boys. . . strayed away from that tree. It was hot in the field that day and they were looking for a way to cool off. They found a gravel pit nearby and a pond. They started playing, like children will do, throwing rocks at pieces of wood that they imagined as "battleships".

As they played near the cool pond, the bank of the pond gave way under Boota Bassi, and he fell into the water. Summandeep and Gurjit both jumped in to help Boota. All three of these beautiful young boys drowned. . . . Their parents, too, had reaped the bitter harvest.

—Raj Chouhan, Canadian
Farmworkers' Union submission

Unenforced Farm Labour Camp Standards

Sukhdeep Madhar was a baby who lived with her farmworker family in a Matsqui horse barn. Sukhdeep's whole family lived in a stall that had once been a home to a single horse. There was no water in their stall. Sukhdeep's mother left

the stall to do some chores and while she was gone Sukhdeep rolled off a bunk and drowned in the bucket of water. Sukhdeep's mother, too, had reaped the bitter harvest.

The farmworkers' bitter harvest is a harvest that is sown and nurtured by government legislation and government neglect at all levels. Sukhdeep Madhar ended her short life in a bucket of water because governments never required that water be piped into the building where she lived. Boota Bassi, Gurjit Pejatta and Summandeep Pejatta lost their precious lives in a gravel pit because government did not care enough to mandate day care for our children—and because their parents made so little money that they were forced to take their children into the fields with them.

—Raj Chouhan, Canadian
Farmworkers' Union submission

In August 1980, the B.C. coroner's jury submitted its report on the drowning death of Sukhdeep Madhar. It recommended legislation be "immediately initiated" to establish standards for farm labour housing and called for "immediate inspections" of agricultural work camps.

The coroner's jury was told of the absence of farm labour housing standards in B.C. and the jury demanded an immediate remedy. Nothing substantive has happened. The irony is that the answer already exists on the books; no new legislation is required. Simply the enforcement of existing "Industrial Camp" regulations of the provincial Health Act (passed in 1946), virtually identical, in fact, to the U.S. farm labour camp standards. And not exactly lavish either. One toilet for every 15 workers. A minimum housing temperature of 65°F.

Exposure to Dangerous Pesticides

A recent survey, the first in Canada, was conducted by the Matsqui, Abbotsford Community Services, on agricultural pesticides and health concerns. That study revealed that:

- 8 out of 10 farmworkers regularly suffer from direct contact with pesticides and a majority (55%) have been directly sprayed;
- 8 out of 10 farmworkers have had to work immediately after a spraying;
- over a quarter have had their living quarters sprayed with pesticides;
- 7 out of 10 farmworkers became physically ill after a direct spraying, yet only 3% received medical help provided by their employers;
- almost one fifth frequently breathe pesticide fumes while working.

What are the effects?

- 9 out of 10 farmworkers have experienced symptoms from pesticide spraying:
- 44% suffered skin rashes;
- 47% suffered itching;
- 50% reported headaches;
- 35% experienced dizziness;
- 17% suffered from gastro-intestinal problems;
- almost 60% of the children working in the fields experienced the same sorts of symptoms.
- almost half reported various central nervous system disorders;
- 1 out of 5 had missed work due to work-related health problems.

Exposure to pesticides may take place over a long term. The same study reported that most workers are in the

fields for more than 11 hours a day in the peak season, work the fields for more than 4 months a year, and have been doing so for an average of three or more years.

The problem is further complicated by inadequate facilities for hygiene:

- almost 80% have no proper wash-up facilities (44% have no access at all to showers at their place of accommodation);
- over 80% have no choice but to eat lunch in sprayed field areas;
- the vast majority have no consistently clean drinking water.

A final problem is that of information:

- less than 10% had access to information on what pesticides they had been exposed to;
- 9 out of 10 had been given no instructions or information regarding pesticide hazards;
- the majority of workers do not speak English.

This study provides the only recent Canadian data available. In the absence of corroborative studies here, people have looked to the situation in the U.S. (N.W.P. Fraser, "Crime in the Fields"; and other studies cited in "Farmworkers and Pesticides"—Canadian Farmworkers' Union and "The Bitter Harvest: Pesticides and Farmworkers"—Fraser Valley Farmworkers' Legal Services Project).

An overview of U.S. studies shows that:

- the infant mortality rate for children of farm workers is twice the national average;
- a farmworker has a life expectancy 20 years less than other Americans and a death rate from pneumonia and tuberculosis three times the

national average;

- even where health and hygiene regulations exist, they are seldom enforced;
- 56% of all farmworkers surveyed had abnormal liver and kidney functions;
- 78% suffered chronic skin rashes;
- 54% had chest cavity abnormalities;
- 85% suffered abnormalities in the central nervous system due to agricultural chemicals—in other words, pesticides.
- Farmworkers have an injury rate due to toxic chemicals almost three times as high as injuries *of all types* for workers in other industries.
- Farmworkers lost twice as many hours due to pesticide-related illnesses than hours lost by manufacturing workers *due to all causes*.

The U.S. Environmental Protection Agency estimates that 25% of pesticides in current use are carcinogenic. A mortality study of Washington State Okanagan orchardists (just south of B.C.'s Okanagan fruit growing area) showed higher than normal rates of lung and large intestinal cancer.

The health situation is made all the more worrisome because pesticide safety regulations are dormant or non-existent. The Canadian pesticide registration system allows the continued use of dozens of pesticides that have never been properly tested as a result of fraudulent laboratory studies in the U.S.

These compounded dangers and uncertainties prompted the B.C. Medical Association in late October 1982 to lend its support to the farmworkers by calling for strict regulations and new standards for handling pesticides. In April 1983, farmworkers will come under the mandatory protection of the Workers' Compensation Board for the first time, but, as yet, the question of pesticide protection remains unresolved.

Recommendations

The B.C. Human Rights Commission fully endorses the following recommendations:

1.) All exclusions and exceptions of farmworkers currently in place under the Employment Standards Act be removed, allowing farmworkers to enjoy the same protection as all other workers (from the brief presented by the Canadian Farmworkers' Union);
2.) That the Industrial Camp Regulations be implemented and applied immediately (Canadian Farmworkers' Union);
3.) Laws should be enacted to guarantee that all Canadian farmworkers have adequate showers, change rooms and laundry facilities. Also, protective clothing and equipment should be required where necessary (from the brief presented by the Fraser Valley Farmworkers Legal Services Project).

Further, with regard to protection of farmworkers from pesticides, we fully endorse the recommendations made by the B.C. Medical Association (Environmental Health Committee) to the Workers' Compensation Board of B.C. (October 1982). These are:

1.) Laws should be enacted to guarantee that Canadian farmworkers have adequate protective facilities as specified by the Workers' Compensation Board.
2.) Specific standards should be legislated to govern the specifications, maintenance and inspection of pesticide equipment.
3.) The Workers' Compensation Board should undertake to ensure that pesticide applicators and users on farms under W.C.B. jurisdiction

are subject to the same certification provisions as those for applicators and users of pesticides on public lands.

4.) Farmworkers who enter fields after spraying should be given necessary safety information in a manner understood by them. Safety information should include the identification and hazards of chemicals being used and should be provided to the worker on information sheets. Applicators should ensure that adequate notice is given to high-risk individuals (e.g. pregnant women and young children) on the farm prior to spraying.

5.) The Workers' Compensation Board should urge the establishment of legislated minimum re-entry periods and mandatory posting of warning signs after application of certain pesticides. Warning signs should be placed in English and in a form understandable by the majority of workers. A comprehensive list of those pesticides should be drawn up by Health and Welfare Canada in co-operation with Environment Canada and the Federal Ministry of Agriculture.

6.) Pre-harvest entry periods should be established, based on residue dynamics, mode of action and the toxicity of each pesticide for both adults and children.

7.) Maximum exposure levels should be sought for all pesticides.

8.) The W.C.B.'s general provisions concerning first-aid standards should apply to farms based on size and other factors, as they have done for other industries, taking particular note of exposure to pesticides.

10.) Suspected cases of pesticide poisoning should be reportable to the W.C.B. and included as

a separate category of accident in the accident statistics.

11.) The W.C.B. should be encouraged to undertake regular selective monitoring of the environment and work force to ensure compliance with the regulations. The W.C.B. should fund epidemiological studies of workers at risk, in co-operation with other jurisdictions, to avoid duplication of effort.

12.) To ensure the ability to conduct meaningful epidemiologic studies, the W.C.B. should require farm operators to keep records of all pesticide applications.

DOMESTIC WORKERS

Foreign workers have a hard time in Canada, especially those from the West Indies.

We were told that there are jobs in Canada as domestic helpers. Many of us decided to take these jobs because, for us, it's a job and in our country the job conditions are bad. Most of us have children to support and they all have to eat, drink and go to school—like the rest of the children in the world.

But when we get to Canada, it's different. Why? Because people look upon us as nothing. They ask us why we leave our country to come and clean someone else's house. They don't look on it as the same job as working in a hospital, hotel or nurses' home, cleaning and making beds. The only difference with it is that those of us who are domestics live in the home where we work. We have long working hours. Some don't get any holidays. That's because we are not covered by the Labour Act. It's up to the good will of our employer to pay us.

—Brief by the Committee for the Advancement of the Rights of Domestic Workers (CARDWO)

The exclusion of domestic workers from labour standards legislation means that this group of workers—all women—lack the protection or benefit of the Minimum Wage Act, Hours of Work Act, Payment of Wages Act, Annual and General Holidays Act, and the Maternity Protection Act.

Live-in household workers are especially vulnerable, not only because of the above exclusions, but also because these women* are new immigrants or, more problematic still, migrant workers without immigrant status. A large proportion, indeed the majority, are members of visible minorities. As with farmworkers, when the brunt of our laws (or exclusion from benefits or failure to enforce regulations) falls disproportionately on ethnic minorities, we must consider its import. Why are these workers denied the rights and advantages available to others in this province?

One problem that the CARDWO brief raises is the gap between regulations and enforcement. Before Employment and Immigration Canada will issue an Employment Visa (usually a two-year 'work permit'), the Canadian employer must agree to some minimum conditions: wages of at least $350 per month plus room and board; a work day of not more than 8 hours, five days a week; 3 hours off a week plus $20 per month for skills upgrading. Further, should the employer fail to abide by these terms, the workers can contact the Canada Immigration Centre and she will be referred to the Canada Employment Centre who will assist her in finding a new job.

In reality, many women are paid less than the minimum —$100 or $200 per month—and work considerably longer hours than indicated, and for no additional pay. The newcomer does not usually have a sense of manoeuverability. She can work only as a live-in domestic; all other forms of employment are out of her reach. And because her visa stipulates her job, her status in the country seems tenuous. She feels tied to her employer because if, for any reason, she loses that job, she has two weeks to find another or face possible deportation.

She (the employer) knew what I was supposed to get, right, but she never paid it. When I had the second extension, I said to her, 'How come you never mention to me about the salary at the Manpower Department?' and she said, 'Well, they don't care about what you pay once you put what they want on the form.' —Brief by CARDWO

* This is one instance where the "Operations Memorandum" of Employment and Immigration Canada to process "foreign domestics" uses the third person feminine pronoun exclusively: *she, her.*

If a woman does complain to the Immigration Department, what is the likely outcome? The CARDWO brief outlines how her employer will be notified for his/her side of the story (who would want it otherwise?); the worker will be fired (what employer would welcome a worker who found them unsatisfactory?); and the worker is either deported (their visa is no longer valid), or given two weeks to find another position as a live-in domestic worker.

Domestic workers currently have no right to sick leave.

> For two weeks I was sick with flu and fever, but I still had to work. I'm a hard worker and my employers know when I'm not feeling well, but they never gave me even a day off. They never said, 'Stay in bed, you're not well.'
>
> I have to get up, prepare the supper, clear up—going up the stairs, you could see I was weak. I had lost weight.
>
> If I were in my own country, I wouldn't go to work. But because I am here, if I don't work, they could say, the Immigration could say, 'Leave tomorrow!'
>
> —Angie Ola-O, CARDWO

Similarly, domestics are ineligible for maternity leave. Chances are, if they become very ill or pregnant, they will be fired.

The stories of abuses are extensive: 15–16 hour days; heavy work; racist remarks from employers; sexual harassment; little time off—one worker out on her day off had to return three times to prepare meals. Few workers are given an annual holiday, or payment in lieu of time off. In some cases, the women must accompany their employers on their vacations, and continue working. Or, they may be given unpaid leave while their employers are on vacation—a financially precarious time.

The most baldly exploitative aspects of this category of

work were mitigated somewhat when, in November 1981, federal immigration laws were altered to permit women on 'work visas' to apply for landed immigrant status after they had been in Canada for two years. Previously, they were forced to return to their home country before they could apply. While this relieved some of the sense of entrapment, many women expressed concern that the criteria used to grant landed immigrant status could work against them nonetheless. They felt there was too much discretion left in the hands of individual immigration officers as a result of eligibility criteria such as 'personal suitability', 'aptitude for learning', and 'adapted to Canadian lifestyle'. They are afraid that having children to support in their home country will be regarded as a detriment. And finally, they are dismayed that there is no right of appeal when an application is refused.

Recommendation to the Federal Government

The Committee for the Advancement of the Rights of Domestic Workers recommends that:

> Domestic workers currently in Canada on employment visas and those entering Canada be granted landed immigrant status based on their ability to do the job and without discrimination based on race, country of origin, familial ties, or amount of formal training.

The Human Rights Commission supports this recommendation.

Charwomen

The situation of the province's 5000 day household workers or "chars" is also disadvantaged. While these people usually do not have the additional burden and stigma of being live-in workers, with precarious immigration

status, they do suffer from the same exclusions from employment standards. Again, they are almost entirely a female work force, and again, many are from visible minorities.

"I've been a domestic worker for three years. I found my jobs through newspaper ads or word of mouth. I've worked mostly for private families, where I come in and clean one day a week in each home.

"There are good and bad aspects to being a cleaning woman. People often consider domestic work the lowest job there is, and assume that people who do that work aren't fit for anything else. That's not true. I've been a waitress, a psychiatric aide, a seamstress and a clerk, but I prefer doing domestic work. I like the independence. Most of the time I'm working on my own without a boss breathing down my neck saying, 'Do this, do that.' I have more control over my schedule and the hours I work than I've had in any other job. I feel comfortable with the work—like most women I've been doing it unpaid all my life. No one can say I'm not experienced!

"There are drawbacks, though. The work is exhausting and boring (but then again, so are most jobs). I come home from work with sore feet, an aching back and a deadened mind. I'm lucky in that I don't work full time. But a lot of women have a family to support or debts to pay off, and they have to work long hours. They end up with bad backs and varicose veins and not a moment for themselves. No time and a half for overtime, either.

"The lack of security is another big problem. Most of us don't get unemployment insurance if we're out of work. Sometimes I worry, what if I get sick? What about when I'm old? And for women with children these worries are even heavier.

"Because we're not covered by Labour Standards laws, we're not even guaranteed the minimum wage. Right now most of us make more than the minimum wage, but that's not secure. Unemployment is high. The government would like to push women off of welfare and into domestic work. That happened in the thirties and the result was a glut in the market and really low wages for domestic workers. That could happen again.

"Since we're isolated in individual homes, it's really hard to organize together to protect our rights, and one person alone just doesn't have that much power. Those of us who are under twenty, over fifty, non-white or immigrants, have a doubly hard fight.

"Another thing I don't like is the attitude of a lot of people who hire cleaning women. We're considered dumb, incompetent, and untrustworthy. In one house I worked, my boss and her sister used to sit around discussing the relative merits of their 'girls' while I was cleaning in the same room. In another house, the teenage boy didn't know my name after I'd been working there once a week for two years. And every day in smaller ways I'm treated as if I'm not a real person, with a mind, feelings and dreams of my own. That kind of attitude really makes me angry, but I have to keep my mouth shut unless I want to risk losing my job."

D.P., quoted in CARDWO brief

It was pointed out to us that, as early as 1913, household workers were attempting to gain inclusion in labour standards laws. At that time, the Home and Domestic

Employees Union demanded a 9-hour day and a minimum wage. Each year, in fact, from 1936 to 1944, a bill to include household workers in the Minimum Wage Act was introduced in the provincial legislature, and defeated. This occurred again in 1976.

> For almost 70 years household workers have been fighting to gain legislative equality with other workers in the province. We sincerely hope that this fight is soon to come to an end. For what possible reason can there be for denying to one group of workers the rights and privileges extended to another?
>
> —Labour Advocacy and Research Association

Recommendations

The Human Rights Commission fully endorses the following recommendations (contained in the CARDWO submission):

1.) Household workers should be covered by all provisions of the provincial Minimum Wage Act, including compensation for overtime worked. In situations where room and board are provided as partial remuneration for labour performed, the amount charged for room and board should equal no more than one-third the total wage.
2.) Household workers should be covered by all provisions of the following provincial legislation: Hours of Work Act; Payment of Wages Act; Annual and General Holidays Act; Maternity Protection Act; Workers' Compensation Act; Truck Act; and the Control of Employment of Children Act.
3.) The Ministry of Labour should assign inspectors whose task it is to familiarize themselves with the conditions and situations of household workers, and to enforce labour standards legislation with respect to these workers.
4.) The provincial Ministry of Labour should establish liaison with the federal Department of Employment and Immigration to ensure that:
    a) abuse of Employment Visa workers in B.C. does not occur;
    b) provincial labour standards legislation is enforced with respect to Employment Visa workers in the same manner as other workers.

What is done, Aunt Emily, is done, is it not? And no doubt it will all happen again, over and over with different faces and names, variations on the same theme.

"Nothing but the lowest motives of greed, selfishness and hatred have been brought forward to defend these disgraceful Orders," the Globe and Mail noted. Greed, selfishness, and hatred remain as constant as the human condition, do they not? Or are you thinking that through lobbying and legislation, speech-making and story-telling, we can extricate ourselves from our foolish ways? Is there evidence for optimism?

—*Obasan*, Joy Kogawa

BRIEFS PRESENTED BY:

Farmworkers Public Meeting, Vancouver, May 21, 1982

Farmworkers Legal Services Project
  Calvin Sandborn
Workers' Compensation Board
  Mr. A.R. Gibbons, Chairman
Canadian Farmworkers' Union
  Raj Chouhan
Samantha (East Indian Women's Organization)
  Ms. Harbans Dhillon
EPIC (Equal Pay Information Committee)
  Aphrodite Harris
  Margaret Kerry
B.C. Federation of Agriculture
  Peter Friesen
Vancouver Legal Assistance Society
  Alan MacLean
B.C. Federation of Labour
  Astrid Davidson
Chinese Benevolent Association
Colin Ridgewell (individual)
  c/o Fraser Valley College
Art Lee
NACOI B.C. Chapter
  Raj Kapahi
Downtown Eastside Residents' Association
  Jim Green
  Anna Wong
Indian People's Association in North America
  Mr. Mahil
Law Union of B.C.
  Ruth Herman
Vancouver Committee on Occupational Safety & Health
  Ron Labonté
Housing Committee of B.C. Association of Social Workers
  Mr. Charan Gill

John Steeves
  Frontier College
Vancouver Men Against Rape
Rick Craig
B.C. Organization to Fight Racism
  Dr. Chin Banerjee
Dr. Hari Sharma
  SFU
Moon Mishra
Rev. Gary Patterson
Community Alternatives
  Val Embree

WRITTEN BRIEFS RECEIVED:

Farmworkers

- Farmworkers Legal Services Project (Calvin Sandborn):
  "The Racist History of Present Laws that Discriminate Against Farmworkers".
  "The Bitter Harvest: Pesticides and Farmworkers", A Brief to the Consultative Committee on IBT Pesticides.
  Brief to the Matsqui Municipal Council re: The Proposed Seasonal Full-Time Farm Help Accommodation By-Law No. 2261 (Feb 82).
  "East Indian Farmworkers and the Law: A Long and Ignoble History of Discrimination" (Brief to the Federal H.R. Com'n).
  "Equality for Farmworkers—A Question of Social Conscience" (Brief to the legislative caucus of the provincial NDP).
  "Suggested Reform of Laws Affecting Farmworkers" (Brief to the Ministry of Labour, 1982).
  "Farm Labour Housing Standards in Jurisdictions Outside of B.C.".
  "Submission to the Employment & Immigration Commission and The Honourable Lloyd Axworthy",

Dec 1981.
Letter to Axworthy re: Section 16 of UIC reg'n (Oct 81).
Letter to Ralph Sollis, Employment Stds Branch, Victoria re: Employment Stds Act and Child Employment Permits (July 81).
Letter to Ralph Sollis re: Child Employment Permits on Farms (Feb 81).
"Farmworkers and Pesticides", A Presentation to the Occupational Health Symposium, Division of Occupational and Environmental Health, U.B.C. (Dec 1982).
"Agricultural Pesticides and Health Survey Results", A Project of the Matsqui, Abbotsford Community Services (Oct 82).

- Canadian Farmworkers' Union: Submission May 82.
"Farmworkers ESL Crusade", Oct 81.
"Farmworkers and Pesticides" (Brief to the Consultative Committee on IBT Pesticides, Feb 82).
"Ladies and Gentlemen" (pesticides and personal experience).
"Justice for Farmworkers—Time to End the Bitter Harvest" (Brief to the Federal HR Com'n) (Raj Chouan).
The Farmworker Newsletter of the C.F.U.
"Conditions of Farm Work", Amar Bains (personal account, 1979).
"Les travailleurs agricoles sont aussi des travailleurs!" (Kelowna, April 81).
misc. clippings, brochures.
- Colin Ridgewell, Fraser Valley Task Force on Racism: *Report of the Fraser Valley Task Force on Racism*, Feb 1982.
- Ronald Labonté, Vancouver Committee on Occupational Safety and Health: "B.C. Farmworkers and Occupational Health".
- Charan Gill, Housing Committee of the B.C. Association of Social Workers: "Housing for Migrant Farm Workers" (plus extensive appendices).
- Allan MacLean, Vancouver Community Legal Assistance Society: "Human Rights and Farm Labour in B.C." (letter).
- R.A.H. Robson, B.C. Civil Liberties Assoc: Letter.
- B.C. Federation of Labour: "Human Rights and Farm Labour in B.C."
- Committee for the Advancement of the Rights of Domestic Workers: Brief, May 82.
- B.C. Federation of Agriculture: "Issues Affecting Farm Labour in B.C."
- N.W.P. Fraser: "Crime in the Fields: Racial Discrimination and Farmworkers in the U.S." (supporting document rather than independent brief).
- Harinder Mahil, Indian People's Association in North America: "End Legislative Discrimination Against Farmworkers".
- Margret Kerry, Equal Pay Information Committee: Letter. Aphrodite Harris: Submission.

Domestic Workers

- Committee for the Advancement of the Rights of Domestic Workers (CARDWO):
Submission to B.C. Human Rights Commission, June 17, 1982.
Brief submitted to The Hon. Jack Heinrich, Minister of Labour by the B.C. Domestics Association; Labour Advocacy and Research Association; Service, Office and Retail Workers Union of Canada (April 1980).
"I Thought There Was No More Slavery in Canada!" by Rachel Epstein.
"Domestic Workers Organizing—The Experience in B.C." by Rachel Epstein.
Letter to The Hon. Lloyd Axworthy, dated 29 March, 1982.
Letter from The Hon. Lloyd Axworthy, dated 27 April, 1982 (to CARDWO).
"Operations Memorandum", Employment and Immigration Canada, dated 11 Feb 1982.

CARDWO newsletters, No. 1, Feb 82; No. 2, April 82.

- Submission presented by the Committee for the Advancement of the Rights of Domestic Workers.